STATE OF MICHIGAN

COURT OF APPEALS

CITY OF DETROIT,

Plaintiff-Appellee,

v

CRAIG JONES, MICHAEL JONES, CRANSTON WOODBERRY, ADAM WOODBERRY, ROZLYN HARRISON, HAPPY WOODBERRY, PENNY MABIN, CAVEL WOODBERRY, PHEBE WOODBERRY, and LAVAN WOODBERRY,

Defendants-Appellants.

UNPUBLISHED
February 22, 2007

No. 265752
Wayne Circuit Court
LC No. 02-219740-CC

Before: O'Connell, P.J., and Saad and Talbot, JJ.

PER CURIAM.

Defendants appeal as of right from an order denying defendants' motion for reconsideration of an order denying defendants' motion for attorney fees and costs. We affirm.

Defendants argue that the circuit court erred in denying their request for attorney fees under MCL 213.66(2) and MCL 213.67. This Court reviews de novo questions of law, including statutory interpretation and application. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). Specifically, defendants argue that the circuit court erroneously interpreted MCL 213.66(2) and MCL 213.67 to mean that defendants were not entitled to recover attorney fees or costs because they were not the parties responsible for successfully challenging plaintiff's action. Instead, an intervening defendant, Delores Williams, who was only included in this action by its consolidation with another case, secured a motion to dismiss plaintiff's action without prejudice. The circuit court ruled that defendants were not entitled to attorney fees under MCL 213.66(2) because they were not the parties that secured the dismissal of plaintiff's complaint. The circuit court also rejected defendants' claim under MCL 213.67, ruling that it did not apply. We agree.

According to MCL 213.66(2), a party may recover "reasonable attorney fees and other expenses incurred" if three conditions are met. First, the party must be an owner of the property. Second, the party must successfully challenge "the agency's right to acquire the property, or the legal sufficiency of the proceedings . . . ." *Id.* Third, the court must find the proposed acquisition improper. *Id.* In this case, Williams, rather than any of these defendants, was the

party who "successfully challeng[ed] . . . the legal sufficiency of the proceedings . . . ." *Id.* The record demonstrates that the trial court did not afford any merit to the arguments of these defendants, and they were destined to lose the property if not for the serendipitous advent of procedural problems involving Williams. Defendants have not satisfied the statute's third condition, either, because the record reflects that the trial court never passed on the merits of plaintiff city's "proposed acquisition," which has not yet been deemed "improper." MCL 213.66(2). Defendants' attempts to forestall or preempt plaintiff's condemnation of the property had repeatedly proved unavailing, so the trial court properly refrained from awarding attorney fees for these unsuccessful challenges. MCL 213.66(6). Defendants' reliance on MCL 213.67 is also misplaced. That statute only allows a party to recover expenses when the agency discontinues its action after title to the property vests in the condemning plaintiff, or possession has been taken by it. *Id.* Here, the condemnation action was not discontinued by plaintiff, but dismissed by the circuit court, so this statute does not apply. Our resolution of these initial issues disposes of the case, so we do not address defendants' other issues.

Affirmed.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Michael J. Talbot